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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,529	02/04/2004	Michael Drossler	02894-638001	2882
26161	7590	12/05/2005	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			CHIN, RANDALL E	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/771,529

Applicant(s)

DROSSLER ET AL.

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08192004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 4 and 5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 02 November 2005.
2. Applicant's election of the species of Fig. 6, claims 1-3 and 6-19 in the reply filed on 02 November 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. The Examiner agrees with Applicant that claim 1 is generic.

### ***Information Disclosure Statement***

4. In the Information Disclosure Statement filed 19 August 2004, the listing of U.S. Application S.N. 10/351,845 under the section "U.S. Patent Documents" is improper.

### ***Drawings***

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Numeral **25** designating the receiving hole (p. 12, line 24) is not shown.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference numerals **14** (Fig. 4) and **32** (Fig. 10) are not recited in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

7. The disclosure is objected to because of the following informalities:

On p. 12, line 13, the recitation "hole 23" in bristle holder 8 appears incorrect since numeral 23 in Fig. 7 designates a double arrow.

On p. 14, "frontal or end opening 33" (line 21) and "insertion guide 33" (line 23) should be corrected for consistency and clarity.

Appropriate correction is required.

### ***Claim Objections***

8. Claims 1, 4, 5, 7, 8, 11 and 14 are objected to because of the following informalities:

Claim 1, line 3, "a head portion" should be positively recited for completeness.

Claim 1, lines 10-11, it is unclear from the claim exactly **where** the "axis of articulation" is located.

Claim 4 (although withdrawn), lines 1-2, "the handpiece" lacks antecedent basis.

Claim 4, line 3, it appears the term "transferring" should be --transfers--.

Claims 4, 5 (although withdrawn) and 6, consistent terminology should be used with respect to "the articulated axis" (see claim 1).

Claim 7, line 2, "a cam" should be positively recited.

Claim 8, lines 1-2, "a drive shaft" should be positively recited.

Claim 11, line 3, " a frontal opening" should be positively recited.

Claim 14, line 2, please correct "a battery a battery".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 6-9, 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriyama '945.

As well as claim 1 is understood, the patent to Moriyama '945 teaches an electric toothbrush (Fig. 1) comprising a graspable housing 1, a bristle holder defined by brush member 2 arranged on a head portion of the housing and "rotatable" (since it performs a turning motion as recited in col. 3, lines 15-16) about an "axis of rotation" (which is purely imaginary) of the bristle holder, the bristle holder carrying a cluster of hair or bristles 40, and a drive mechanism for the bristle holder, including a motor 4 (Fig. 2) arranged within the housing, and a transmission member transferring a driving motion from the motor to the bristle holder, the transmission member including a brush supporting arm or drive rocker 14 (Fig. 2) arranged to rock in multiple axes and driven by the motor to approximately traverse a double conical path (Figs. 7-10), the drive rocker 14 and the bristle holder being connected in jointed manner about an "axis of

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articulation" (purely imaginary and claim 1 never clearly sets forth where this "axis of articulation" is) that is parallel to the "axis of rotation" of the bristle holder.

As for claim 2, there is a connection between the bristle holder and the drive rocker enables a further degree of freedom besides articulation about the axis of articulation, permitting a translatory motion (col. 3, lines 1-5) between the drive rocker and the bristle holder along the axis of articulation.

As for claim 3, the drive rocker is seated in a notch-shaped recess (Fig. 2) in the bristle holder.

As for claim 6, the bristle holder is seated on the drive rocker essentially without any play along the articulated axis (Fig. 2).

As for claim 7, a motor end of the transmission member is coupled to the motor via "a cam" (never positively recited).

As for claim 8, "the cam" is fixed non-rotatably on a drive shaft, such that the motor end of the transmission member is driven in a circular path (Figs. 7-10).

As for claim 9, there is a bearing member 10 or 21 displaceable "longitudinally relative to the toothbrush" (a broad recitation) is provided for bearing the transmission member "between" the motor 4 and the bristle holder 2.

With respect to claim 11, there is a "motor-supporting chassis" defined by a supporting member or frame (disclosed but not shown in col. 2, lines 18-21) which would be attached to an inside of the toothbrush housing, wherein the motor-supporting chassis and motor are configured to be inserted into the toothbrush housing through "a

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frontal opening" (never positively recited) in the toothbrush housing lengthwise relative to the toothbrush (Figs. 1 and 2).

As for claim 12, the chassis is deemed configured to engage "automatically" (a broad recitation) with the toothbrush housing when inserted in a linear motion.

As for claim 13, the chassis supports a switch 3 and defines a battery compartment containing a battery (col. 2, lines 11-12), the chassis, motor, battery and switch deemed configured to be inserted pre-assembled "into" (a broad recitation) the toothbrush housing.

As for claim 14, the chassis includes a switch deemed to be broadly considered a "movable contact breaker," the breaker operable to disconnect the battery contained in "a battery compartment" (never positively recited) of the chassis.

As for claim 15, there is a "rotational engagement code" allowing the chassis to be inserted in only one alignment relative to the toothbrush housing, i.e., a longitudinal alignment.

As for claim 16, there appears to be a housing cap (Fig. 1) covering the toothbrush housing opening through which the chassis is inserted.

As for claim 17, the bristle holder carries only one movable bristle cluster at 40.



***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriyama '945.

As for claim 10, the provision of a seal to insulate the transmission member from the toothbrush housing would be obvious to provide for by one of ordinary skill to prolong the useful life of the components.

As for claim 19, the choice of an "approximately circular" bristle cluster would be well within the level of ordinary skill since rectangular, oval, or circular heads are well known in the toothbrush art and merely may depend on aesthetics.

***Allowable Subject Matter***

13. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Hilfinger and Cohen are relevant to various pivoting or oscillating brush head movements.

15. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Richard Crispino, can be reached at (571) 272-1226. The number for Technology Center 1700 is (571) 272-1700.

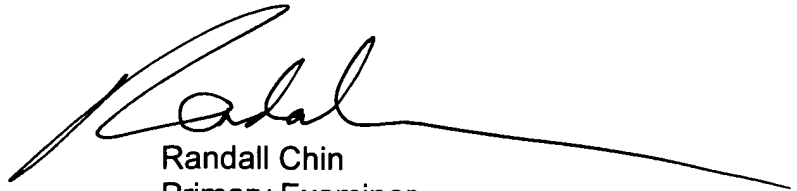
The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to be 'R. Chin'.

R. Chin

A handwritten signature in black ink, appearing to be 'Randall Chin'.

Randall Chin  
Primary Examiner  
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